such a result would not be in the public interest. First, ILEC switches do not contain information on the IXC choices of customers that obtain local service from facilities-based CLECs, in particular, CLECs that use their own switches. Thus, from a technical standpoint, a customer that switches to a facility-based CLEC can only obtain PC protection from that CLEC. While this technical problem does not exist for customers switching to a reseller, it would be confusing, to say the least, for customers to be able to retain their PC protection in some cases, but not others. Moreover, customers who change LECs should interface exclusively with their new LEC with respect to their local exchange needs. Therefore, the Commission should rule that customers who seek to retain PC protection for their interexchange service should arrange with their new LEC for such protection. To the extent that a customer's new LEC is a reseller, that reseller can arrange with the ILEC for the renewal of PC protection on the customer's account.[23]

Finally, the Commission seeks comment on factors to be considered in assessing the lawfulness of a particular PC-freeze solicitation in a section 208 proceeding. The Commission tentatively concludes that such factors may

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[23] The Commission has encountered an analogous issue in connection with 800 database service. In that context, the issue was whether LECs should be able to sell so-called "vertical features" directly to IXC 800 service customers. The Commission held that they should be limited to providing those services to IXCs, which, in turn, could offer them to end users. The Commission based its decision, in part, on the ground that the provision of vertical services by LECs directly to IXC customers "would potentially interfere with the relationship between the IXC and its customer." Provision of Access for 800 Service, 4 FCC Rcd 2824 (1989) at para. 57; Memorandum Opinion and Order on Reconsideration, 6 FCC Rcd 5421 (1991) at paras. 34-36. The same considerations apply here. Customers who choose a new LEC for their local service should interface with that new LEC, not their former LEC, with respect to all of their local service needs, including the implementation and/or removal of PC protection.

include: (i) the degree of certainty that the PC freeze was obtained through lawful means and the extent to which circumstances suggest the existence of deception or fraud; (ii) whether the solicitation practice at issue is unreasonable, unreasonably discriminatory, or anticompetitive in purpose or effect; and (iii) the impact of the solicitation practice on consumers, including whether the consumer is fully and accurately informed of the nature of the solicitation and the effect of a PC freeze, is clearly given the option of selecting or declining the PC freeze, and is informed of his or her right to cancel the PC freeze and select a different PC at any time.

Ameritech believes that these are appropriate criteria, subject to certain caveats. It is apparent from the record on the MCI Petition that MCI and other ILEC competitors seek to game the Commission's rules with respect to PC protection in order to obtain a competitive advantage. In particular, they have advanced the theory that it is anticompetitive for ILECs to offer PC protection at all to their customers, while it is perfectly acceptable for CLECs to offer such protection. Ameritech is heartened by the fact that the Commission has not in this Notice proposed unfair and unbalanced rules that discriminate among carriers. Nevertheless, Ameritech remains concerned that CLECs would abuse the proposed test by claiming that PC protection for ILEC customers is inherently "anticompetitive in purpose or effect." Therefore, if the Commission adopts these criteria, it should make clear that ILEC customers have the same

right to protect themselves against fraud as do CLEC customers. The Commission should hold that a PC protection program that is marketed and implemented in accordance with FCC requirements, including the requirements proposed in these Comments, is not anticompetitive in purpose or effect.

In addition to clarifying the meaning of the phrase "anticompetitive in purpose or effect," the Commission should make clear, consistent with the discussion above, that a PC protection program that does not incorporate simple, non-burdensome procedures, including a three-way conference call, for eliminating PC-protection, is not reasonable. It should also modify the third criterion to make clear that consumers must be informed not only of their right to cancel PC protection, but how to do so. With these changes, Ameritech believes that the proposed criteria are reasonable.

G. Liability Issues

In paragraphs 25-30, the Commission seeks comment on various liability issues arising from slamming. Reflecting the language of section 258(b) of the 1996 Act, the Commission proposes to amend its rules to provide that any carrier that collects charges after slamming a customer is liable to the customer's authorized carrier for all such charges collected. The Commission seeks comment as to what steps should be taken and, by whom, to make the subscriber whole. It also seeks comment on the extent to which subscribers should be

liable to their authorized carrier for unpaid charges assessed by the unauthorized carrier.

Ameritech believes that a few simple principles should govern the Commission's decisions in this area. First, the unauthorized carrier (the slammer) should receive no revenues for service rendered after slamming the customer.[24] As the Commission notes, one of the reasons carriers continue to engage in slamming is that, under existing liability rules, they have economic incentives to do so.[25] Only by denying them *any* revenue from their unlawful activity are their incentives changed. Slammers that have collected revenues from a subscriber should be liable to the authorized carrier for all amounts collected. Slammers whose bills remain unpaid should have no rights to collect the amounts billed.[26]

Second, consumers who are slammed should be required to pay an amount equal to what would have been billed by their authorized carrier. If the consumer has erroneously paid the unauthorized carrier, the authorized carrier -

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[24] The Commission might consider some maximum time limit - *eg.* 4 months - for the application of these liability rules. Presumably, at some point, consumers who do not take steps to return to their carrier of choice should not be relieved from the obligation to compensate the carrier that they claim has slammed them.

[25] See Notice at para. 4.

[26] If a billing agent has purchased the receivable from the slammer, the billing agent should be permitted to recourse those unpaid charges back to the slammer. Moreover, notwithstanding that slammers are not entitled to revenues earned or billed after the slam takes place, the Commission should make clear that they remain fully liable for any access charges or billing and collection charges incurred during that time. The fact that they will thereby suffer an out-of-pocket loss should serve as a further disincentive to engage in slamming.

which has the right to collect the full amount of these payments from the unauthorized carrier - should be required to remit to the consumer any amounts in excess of what the consumer would have been billed under the authorized carrier's rate schedules. If the consumer has not paid the unauthorized carrier, the authorized carrier should be permitted to issue a bill that reflects the authorized carrier's rate schedules.

As is evident from this second principle, Ameritech does not believe that consumers who are slammed - or who claim they are slammed - should be absolved of *all* liability for unpaid charges. Such a rule would invite fraud by incenting consumers to lodge specious slamming complaints and to delay reporting incidences of slamming in order to maximize the time they receive free service. Thus, the Commission could find itself in a situation in which, to reduce one type of fraud, it inadvertently stimulated another. Nor is there any reason why consumers should, as a matter of equity, have a right to such a windfall. So long as consumers do not pay any more than they should have for the calls they have made, they are, for all intents and purposes, made whole.

If the Commission implements these principles - in particular, if it holds that consumers are liable to the authorized carrier for charges the authorized carrier would have billed - then the Commission can and should also require the authorized carrier to bestow on the subscriber any premiums that the subscriber would have earned if it were not slammed. For example, if the authorized

carrier awards frequent flyer miles or other bonuses, it should confer bonuses based on the net amounts it recovers from the slammer or the subscriber.

On the other hand, if the Commission does not require subscribers to pay the authorized carrier for the services they used, there would seem to be little reason to award subscribers for lost premiums. Since the subscriber has received free service, he/she does not need premiums to be made whole. Indeed, if the Commission required the authorized carrier to award such premiums, it would necessarily have to require the unauthorized carrier to compensate the authorized carrier for the value of such premiums. Otherwise, the authorized carrier would be unfairly penalized, losing not only telecommunications revenues as a result of the slamming event, but also the out-of-pocket costs associated with the premiums. This approach, however, could prove to be an administrative nightmare, requiring the valuation of intangibles, such as frequent flyer miles, and other non-cash award programs. The better approach - the one that makes subscribers whole in the simplest way possible - is to require subscribers to pay the authorized carrier pursuant to that carrier's rate schedules and to require the authorized carrier to provide whatever premiums are thereby earned.

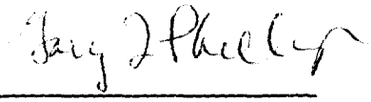
The approach to liability issues outlined above can be easily implemented if the Commission requires slammers to provide call detail (including information on revenues collected) to the authorized carrier for the period in which the customer was slammed and these liability rules apply. The

authorized carrier can use this information to render proper bills to the customer (in the event the customer has not paid any charges) and/or to calculate appropriate refunds that may be due to the customer in connection with charges that have been paid. It can also calculate revenues to which it is entitled from the slammer. In this manner, the authorized carrier and slammer should be able to settle all liability issues without involvement of the Commission or third parties.

H. Liability of Submitting and Executing Carriers

In paragraphs 32 through 35 of the Notice, the Commission tentatively concludes that it should adopt a "but for" test to determine the liability of submitting and executing carriers. Pursuant to this approach, an executing carrier would be liable for slamming only if the submitting carrier submits a change request that conforms with Commission requirements, but the executing carrier fails to execute the change in accordance with the submission. Ameritech supports this tentative conclusion and believes that it properly allocates liability in cases of slamming.

Respectfully Submitted,



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